to see what is ahead. The main question is why could not he see the trishaw at a distance within the range of his car's light as expected of him. He did not say he was dazzled by the light of the oncoming car. Even if he did, he should have stopped his car instead of driving on to the extent that, as admitted by him, " . . . at that time I could not see anything in front of me". He said he 'suddenly' saw the trishaw. Again the question is why he could not see it before it was too late.

As we study the sketch plan, there were brake marks on the left side of the road facing Pasir Mas. The direction of the brake marks was towards the middle from the left of the road. This would indicate the car was very close to the road edge before the application of the brakes since from J, the beginning of the brake marks to the left road edge is 1' 10". From J1, end of left brake mark to F2, the trishaw was 104 feet, denoting the distance even after the braking that the trishaw was pushed to. The glass splinters were from J1 up to the trishaw. From the sketch plan it appeared that the collision occurred on the left side of the road and not in the middle as stated by the appellant.

In *Clarke and wife* v. *Brims*[1] the defendant parked his car without the rear light on during the black-out during the last war and in consequence another vehicle ran into it and suffered damage. The question decided in the case was whether a breach of statutory duty under the provisions of Road Transport Lighting Act 1927 gave rise to a civil action. It was held that the Act imposed public duty only and did not in addition impose duties enforceable by any individuals aggrieved (see page 505).

In *Coote* v. *Stone*[2] it was held that a breach of Various Trunk Roads (Prohibition of Waiting) (Clearways) Order 1963 did not give rise to a civil remedy to a person injured thereby. In this case the defendant parked his car in contravention of the Order 1963 and the plaintiff's car collided into the rear of the defendant's car. Davies L.J. at page 283 stated as follows:

"It seems to me that the clearway regulation is not, primarily at any rate, designed to give a civil remedy to a person injured by a breach of it. A fine can be imposed, of course, as I have said, but it is a public duty that is enacted, and I cannot see that it gives rise to any private liability."

The appellant had no excuse to knock the trishaw from behind. He was, in my opinion, wholly liable for the accident. There was no argument on the quantum before me. As such I leave it as was decided by the learned Magistrate.

As such I dismiss his appeal.

Appeal dismissed.

Solicitors: *Wrigglesworth & Co.; Jegathesan & Co.*

THAM MENG FATT v. UTAM SINGH OMNIBUS CO. LTD

[O.C.J. (Ajaib Singh J.) March 23, 1982]
[Seremban – Civil Suit No. 42 of 1974]

Damages – Motor accident – Infant fell from moving bus – Death occurred 9 years after accident – Several items added for special damages – Objections overruled.

Limitation – Special damages – Writ amended after limitation period.

The plaintiff infant sued the defendant through his father and next friend for damages arising out of a motor accident. The infant was 7 years old at the time of the accident and some 9 years later he died from the injuries he had received. The writ was consequently amended with the father stepping in as the administrator of the estate of the deceased infant. The Statement of Claim was amended to include several items for special damages which were not in the original claim. The High Court overruled the defendants' objection to the amendments and allowed it.

The facts revealed that the infant was boarding the defendants' motor bus when it moved causing the infant to fall and suffer serious injury.

Held: (1) the plaintiff had proved his case and the defendants were wholly liable for the accident and the consequent injuries suffered by him;

(2) the writ had been filed within time limit and the amendments were merely the items in respect of special damages which the plaintiff had incurred and would not be caught under the Limitation Act although the items were added after the limitation period;

(3) the plaintiff was awarded $65,000 for pain and suffering; and special damages comprising $2,000 for nursing, $750 for nourishing food, $15 for clothes, $35 for bag and books and $1,500 for transport expenses. Funeral expenses and the cost of extracting letters of administration were agreed at $1,250 and $350 respectively. No award was made for future earnings as there was insufficient evidence to do so.

CIVIL SUIT.

S. Kanagasabapathi for the plaintiff.
N.A. Marjoribanks for the defendants.

Cur. Adv. Vult.

Ajaib Singh J: The plaintiff infant sued the defendants through his father and next friend for damages arising out of a motor accident. The infant was about 7 years old at the time of the accident and some 9 years later he died from the injuries he had received – from complications arising out of the injuries. The writ was consequently amended with the father stepping in as the administrator of the estate of the deceased infant. The Statement of Claim was also amended accordingly. This amendment was made pursuant to an application by plaintiff's counsel and in doing so the plaintiff added several items for special damages which were not in the original statement of claim. I allowed the amendments over the objections raised by learned counsel for the defendants. I shall revert to this later in my judgment.

The plaintiff's claim was that on September 22, 1970 the infant was lawfully boarding a motor bus when the defendants' agents or servants negligently and carelessly put the said motor bus into motion causing the plaintiff thereby to fall off the bus and suffering serious injuries. The defendants denied the allegation of negligence on their part or of their servants and agents and averred that the injuries were caused to the plaintiff when he was pushed by other school children to the ground. At the end of the hearing I found for the plaintiff and held that the defendants were wholly to be blamed for the accident.

The infant (PW3) gave evidence on June 21, 1979 when he was about 16 years old – the accident having taken place on September 22, 1970 when the infant was about 7 years old. His evidence was supported by another school boy Lee Jan Pin. (PW5). I accepted the evidence of these two boys that the defendants' bus had come along to where the school children were waiting and the boys were in the process of boarding the bus after some passengers had disembarked. The infant (PW. 3) had one foot on the bus steps when the bus suddenly moved forward causing him to fall and hit the ground on his hip area. PW5 was two boys behind PW3 and saw what had happened. The bus then stopped after going forward a short distance and the driver came out after which the infant was taken to the hospital.

Balakrishnan (DW2) the bus driver said that he was not in the bus at all when the incident took place. His bus was stationary and the engine was not running and he himself was seated in another bus nearby talking to his friends. Later at about 6.15 p.m. they heard a commotion and he came out and saw this boy injured. Another witness Puran Singh (DW1) who was also a bus driver employed by the defendants gave similar evidence in support of DW2.

Although the infant (PW3) and his witness (PW5) were young boys aged between 16 and 18 and were relating events which took place some 9 years earlier I was very much impressed by the manner in which they gave evidence and from their demeanour I was satisfied that they were speaking the truth. On the other hand the bus driver and Puran Singh appeared guarded in the manner they were giving their answers and in some instances the evidence was remarkably the same. These two people were bus drivers and they would have the court believe that they were seated away in another bus at the time when it was time for school children to be going home in their respective buses. Also by the nature of the injuries it is more probable that the boy fell off a running bus and received severe injuries to his hip area and spine which would have been somewhat unlikely if he had merely been pushed to the ground by the other school boys.

In the event therefore I held that the plaintiff had proved his case that the defendants were wholly liable for the accident and the consequent injuries which the plaintiff received.

Now to revert to the application for the amendment of the statement of claim. Mr. Marjoribanks for the defendants submitted that items (c), (d), (e), (f) and (g) in the proposed amendments to the particulars of special damages were caught by the Limitation Act 1953. These items referred to nursing care, nourishing food, damage to books and clothes and transport expenses. However I overruled the objection. The writ had been filed within the time limit and the amendments were merely the items in respect of special damages which the plaintiff had incurred and would not in my view be caught under the Limitation Act although these items were added after the limitation period.

The infant had suffered serious injuries and had been in and out of hospital till he died in December 1979. For the injuries, pain and suffering and loss of amenities till the date of the deceased's death I awarded a sum of $65,000.00 with 6 per cent interest from date of service of writ. As for special damages I awarded a sum of $2,000.00 for cost of nursing, $750.00 for nourishing food, $15.00 for clothes, $35.00 for bag and books and

$1,500.00 for transport expenses. Funeral expenses and the cost of extracting the letters of administration were agreed at $1,250.00 and $350.00 respectively. I awarded interest at 4 per cent on special damages from the date of the accident. There was a claim also for future earnings representing the "lost years" but I made no award on this item as I found insufficient evidence to do so.

Order accordingly.

Solicitors: *R.K. Nathan & Co.; Lovelace & Hastings.*

BRUNEI REPORT

PUBLIC PROSECUTOR v. JEE SCHOW KUNG

[Case Stated (Roberts C.J.) February 2, 1980]
[Bandar Seri Begawan – B.S.B./C.C./4044 of 1979]

Criminal Law and Procedure – Charge – Question reserved for court – Whether magistrate was right in ordering retrial on amended charge

The accused in this case was charged "that you at about 3.15 pm on the 19th day of May, 1979, at Haji Daud's Flat, Jalan Gadong, Bandar Seri Begawan, Brunei, in the State of Brunei, consumed a controlled drug, to wit diamorphine, and that you thereby committed and offence punishable under section 6(b) of the Misuse of Drugs Enactment, 1978".

The accused pleaded guilty but, after conviction, put forward in mitigation facts which, if believed, would have amounted to a defence to the charge. The accused's appeal to the High Court against his conviction was quashed. The case was sent back to the Magistrate's Court for retrial. On October 30, 1979, the accused was brought before the Magistrate's Court. He was charged "that you, at about 1502 hours on May 19, 1979, at Haji Daud's flat, Jln. Gadong, Bandar Seri Begawan, in the State of Brunei, not being a person authorized thereunder, had consumed a controlled drug, to wit morphine and codeine, and that you thereby committed an offence under section 6(b) of the Misuse of Drugs Enactment, punishable under section 29 of the aforesaid Enactment".

Counsel for the accused objected to the form of charge on the grounds that it was different in material particulars from the original charge and that the defendant should be tried only on the original charge, in respect of which the High Court had ordered a retrial.

The magistrate ordered that the trial should continue on the amended charge. He reserved a question of law for the High Court: "Whether the said determination was correct in point of law and what should be done in the premise".

Held: (1) the terms of section 285(c) of the Brunei Criminal Code make it clear that a new trial may be ordered by the High Court on the same or an amended charge. Therefore the strict requirement of *Nazimuddin case* does not apply in Brunei;

(2) since it is open to the Judge to order a retrial on the amended charge, he may direct what amendment shall be made to the original charge;

(3) once a charge is before the court, amendment of it requires the leave of the court. As the Judge has ordered a retrial of the original charge, the permission of the magistrate must be obtained to amend it;

(4) in the present case the prosecution presented an amended charge instead of seeking leave to amend the original charge. Had they sought leave, there was no doubt that the magistrate would have granted it, since he was prepared to proceed with the trial on the amended charge. A new trial on the amended charge laid before the magistrate on October 30, 1979 was therefore ordered to be held.